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Supreme Court of the United States.

October Term, 1957.

No. 925

CARMEN MARQUEZ ET AL.,
Petitioners,

v.

MARGARITA AVILES,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioners, Carmen Márquez *et al.*, respectfully pray that a writ of certiorari be issued to review the decision of the United States Court of Appeals for the First Circuit, rendered on February 25, 1958, which affirmed a judgment of the Supreme Court of Puerto Rico, reversing a judgment of the Puerto Rico trial court sustaining the petitioners' (plaintiffs') complaint on the merits.

Opinions Below.

1. The opinion and judgment of Chief Justice Calvert Magruder and Circuit Judges Peter Woodbury and John

P. Hartigan in the United States Court of Appeals for the First Circuit, in the action of Carmen Márquez *et al.* (Carmen Márquez and her brothers Nemesio, José Antonio, Ismael, Wilson, Elba Lydia and Edwin Márquez) against Margarita Avilés, not yet reported, is printed in R.A. and proceedings in Court of Appeals, pp. 47-57, inclusive.

2. The judgment of the Supreme Court of Puerto Rico, not reported, is printed in R.A. 27-29.

3. The opinion and judgment of the Puerto Rico trial court (Superior Tribunal, Aguadilla Part), not reported, is printed in R.A. 19-21.

Jurisdiction.

1. Jurisdiction to review this case upon writ of certiorari is conferred upon this Court by 28 U.S.C. sections 1254, 1651 and 2101 (c).

2. Jurisdiction on appeal to the United States Court of Appeals for the First Circuit was invoked under 28 U.S.C. section 1293.

3. Jurisdiction is also invoked under Public Law No. 600, 81st Congress (64 Stat. 319), a federal statute that enabled the people of Puerto Rico to draft and adopt the Constitution of the Commonwealth of Puerto Rico, by section 3 of which it was required that such Puerto Rico Commonwealth Constitution should conform with the United States Constitution, and by section 4 of which there were reenacted sections 2 and 43 of the previous (Jones) Organic Act (39 Stat. 951) and embodied in the Federal Relations Act (L.P.R.A. Vol. 1, section 37); section 2 of said Organic Act expressly guarantees the rights and privileges of United States citizens in Puerto Rico; section 43 of said Organic Act gives statutory jurisdiction to the United States Court of Appeals for the First Circuit and to this

Supreme Court; these sections 2 and 43 of said Organic Act were consented to by the people of Puerto Rico by their vote at the polls, as directed by said Public Law No. 600.

4. The plaintiffs in the instant case invoke the provision on "equal protection of the laws" under the United States Constitution, and also invoke the provision of "equal protection of the laws" under the Constitution of the Commonwealth of Puerto Rico (section 7; L.P.R.A. Vol. 1, page 189), which was approved by Public Law 447, 82d Congress (66 Stat. 327).

Questions Presented.

1. Whether under the new and present political status of Puerto Rico and the relationship of the Commonwealth of Puerto Rico with the United States of America the citizens of the United States in Puerto Rico enjoy the right of "equal protection of the laws" under the Constitution of the United States of America.

2. Whether a Puerto Rico unrepealed statute approved on August 20, 1952 (Law No. 17; 31 L.P.R.A. section 441), which reads that *all children* have, with respect to the estate left by their parents, the same rights that correspond to legitimate children, may be set aside denying to the plaintiffs the equal protection of this law by ruling that the plaintiffs have no inheritance rights, while giving all the inheritance rights only to the defendant in like condition as sister of the plaintiffs. Their common father, whose succession is in question, died in 1954.

3. Whether an unrepealed statute of Puerto Rico (Civil Code of Puerto Rico, section 687, 31 L.P.R.A. section 2263), which embodies the universal principle that the qualification of heir is determined by the law in force at the time

of the death of the person whose succession is in question, may be set aside denying to the plaintiffs the equal protection of this law, while at the same time enforcing it, in class privilege and discrimination, in favor of the defendant in like condition as sister of the plaintiffs.

4. Whether a simple recommendation in a Report of the Committee on the Bill of Rights of the Puerto Rico Constitutional Convention (1951-1952) should prevail, in conflict with undoubtful and unambiguous terms of the Constitution adopted. Said committee recommendation was not heeded by the Puerto Rico Constitutional Convention and was not embodied in the final text of the Puerto Rico Commonwealth Constitution; and such recommendation was not submitted either to the people of Puerto Rico at the time when the people of Puerto Rico, under the requirements of said Public Law No. 600, approved at the polls the Commonwealth Constitution.

5. These questions were raised before the United States Court of Appeals for the First Circuit in the brief for plaintiffs-appellants, *infra*, and in the Statement on Appeal. (R.A. pages 34-41.)

6. It was not necessary to raise the question of constitutionality before the trial court nor before the Supreme Court of Puerto Rico, where plaintiffs had a judgment favorable to them. Plaintiffs invoked the two below-mentioned local statutes, which carry the judicial presumption of constitutionality. The Supreme Court of Puerto Rico, in the decision rendered, raised the constitutional question. (R.A. 27-29.) *Craig* v. *Missouri*, 4 Pet. 410, 7 L. Ed. 903. Plaintiffs also did not have to raise such question, since the appeal to the United States Court of Appeals tended to prevent a clear miscarriage of justice. *Dowell* v. *Jowers*, 166 F. (2d) 214, *Re Adoption of a Minor*, 214 F. (2d) 844. The challenged judgment of the Supreme Court of Puerto Rico clearly denies the plaintiffs a constitutional right in

denying the equal protection of the state laws of Puerto Rico, pointed out below. *Rogers* v. *Alabama*, 192 U.S. 226; *Fourth National Bank of New York* v. *Francklyn*, 120 U.S. 747, 7 S. Ct. 757.

Constitutions and Statutes Involved.

In addition to the provision of the United States Constitution on "equal protection of the laws," the provisions of the Puerto Rico Commonwealth Constitution and of the statutes involved are short and read as follows:

> "The dignity of the human being is inviolable. All men are equal before the law. No discrimination shall be made on account of race, color, sex, birth, social origin or condition, or political or religious ideas. Both the laws and the system of public education shall embody these principles of essential human equality."

Constitution of the Commonwealth of Puerto Rico, Bill of Rights, Art. II, Sec. 1, L.P.R.A. Vol. 1, p. 178.

> "All children have, with respect to their parents and to the estate left by the latter, the same rights that correspond to legitimate children."

Law No. 17, approved on August 20, 1952, 31 L.P.R.A. Sec. 441.

> "In order to determine the qualifications of the heir or legatee, the time of the death of the person whose succession is in question shall be taken in consideration."

Civil Code of Puerto Rico, Sec. 687, 31 L.P.R.A. Sec. 2263.

Statement.

Carmen, Nemesio, José Antonio, Ismael, Wilson, Elba Lydia and Edwin Márquez alleged before the Superior Tribunal of Puerto Rico, Aguadilla Part, through the amended complaint, dated October 4, 1954, that Margarita Avilés is a legitimate daughter and at that time the sole and universal heir of Bonifacio Avilés, who died in Moca, Puerto Rico, on March 18, 1954; that the above-named plaintiffs, born in Moca, Puerto Rico, under the conditions alleged in the complaint, are illegitimate children of Bonifacio Avilés, who was the owner of various properties described in the complaint; and wherefore, the plaintiffs prayed the Superior Tribunal to enter judgment decreeing that the plaintiffs are illegitimate children of Bonifacio Avilés, with inheritance rights over the property left by their father at his death. (R.A. 1-8.)

The defendant, on November 1, 1954, filed a motion to dismiss said amended complaint, alleging that it did not state sufficient facts to state a claim upon which relief could be granted. (R.A. 10.)

Upon said motion to dismiss, the Superior Tribunal, on November 12, 1954, entered a first judgment dismissing the amended complaint entirely. (R.A. 11-13.)

The plaintiffs entered an appeal from this first judgment of the Superior Tribunal to the Supreme Court of Puerto Rico. (R.A. 14.)

On September 6, 1955, the Supreme Court of Puerto Rico entered a first judgment reversing said first judgment of the Superior Tribunal and remanded the case for further proceedings. (R.A. 15.)

Then the defendant answered the amended complaint, denying the main allegations of the complaint. (R.A. 16.)

The case was heard on March 8, 1956, before the Superior Tribunal, and evidence was presented by the plain-

tiffs. A continuance was ordered for April 3, 1956. On April 2, 1956, the defendant submitted the case on the merits of the pleadings and the evidence presented by the plaintiffs. (R.A. 18.)

On May 10, 1956, the Superior Tribunal entered the statement of the case, findings of fact and of law, and judgment. This second judgment sustained entirely the amended complaint, and decreed that the plaintiffs are the acknowledged illegitimate children of Bonifacio Avilés, with all the rights belonging to said children as such, including to each one the right to inherit from their father in a share equal to that of his legitimate daughter in the properties left by their father at the time of his death. (R.A. 19-21.)

The Puerto Rico trial court's findings of law and judgment stated as follows:

> "According to Section 125 of the Civil Code of Puerto Rico (31 LPRA § 504) and according to said Judgment of the Supreme Court and the cases of *Cruz* v. *Andrini*, 66 P.R.R. 19; *Fernández* v. *Heirs of Fernández*, 66 P.R.R. 831; and *Montañez* v. *Rodríguez*, 67 P.R.R. 198, cited therein, the father or his heirs are bound to recognize his natural children when said children have uninterruptedly enjoyed the condition as of a natural child of said father, justified by acts of the same father or of his family, or when their mother was known to have lived in concubinage with the father during her pregnancy and at the time of the birth of the children.
>
> "Under Section 687 of the Civil Code of Puerto Rico (31 LPRA § 2263) and according to what has been decided in the cases of *Febre* v. *Febre*, 40 P.R.R. 208; *Gijón* v. *Surillo, et al.*, 31 P.R.R. 191; *Correa et al.* v. *Correa et al.*, 18 P.R.R. 115 and *Ex Parte Smith*,

et al., 14 P.R.R. 643, the right to inherit is determined in accordance with the law in force at the time of the death of the person whose succession is in question.

"Pursuant to the provisions of Act No. 17, approved on August 20, 1952 (31 L.P.R.A. § 441) which was in force as stated above at the time of the death of Bonifacio Avilés, all children have, with respect to their parents and to the estate left by the latter, the same rights that correspond to legitimate children.

"For the reasons and grounds stated in the Statement of the Case and Findings of Fact and of Law issued in this case, which is attached to this judgment and made part thereof, the amended complaint filed in this case is hereby sustained, and it is decreed that plaintiffs Carmen, Nemesio, José Antonio, Ismael, Elba Lydia, Wilson, and Edwin Márquez are the acknowledged illegitimate children of Bonifacio Avilés, with all the rights belonging to said children as such, including the right to inherit his father in a share equal to that of his legitimate daughter mentioned above, in the properties left by him at his death." (R.A. 20-21.)

From said second judgment of the Superior Tribunal the defendant entered an appeal on June 7, 1956, to the Supreme Court of Puerto Rico. (R.A. 22.)

On March 29, 1957, by a *per curiam* decision the Puerto Rico Supreme Court entered a second judgment, affirming said second judgment of the Superior Tribunal of May 10, 1956, but modifying same to strike out the right of said children to inherit over their father's estate. (R.A. 27-28).

According to this second judgment of the Puerto Rico Supreme Court, the plaintiffs are the acknowledged chil-

dren of Bonifacio Avilés. Not being in controversy that the plaintiffs are children of Bonifacio Avilés, the plaintiffs entered an appeal to the United States Court of Appeals for the First Circuit only on the parts of the judgment of the Supreme Court relating to the plaintiffs' right to inherit. (R.A. 29-30.)

The United States Court of Appeals for the First Circuit delivered an opinion and entered judgment on February 25, 1958, affirming the judgment of the Supreme Court of Puerto Rico. (R.A. 45-57.)

The plaintiffs filed a petition for rehearing before the United States Court of Appeals for the First Circuit, dated March 4, 1958. (R.A. 58.)

The United States Court of Appeals for the First Circuit denied the rehearing sought, on March 10, 1958. (R.A. 58.)

Reasons for Granting the Writ.

1. The question involved in the instant lawsuit is of paramount public interest, affecting fundamental human rights of the people of the Commonwealth of Puerto Rico.

2. It is very important that this Court decide whether the citizens of the United States living in or coming to Puerto Rico are entitled to be protected by the provision on "equal protection of the laws" of the Constitution of the United States of America, and of the Constitution of the Commonwealth of Puerto Rico approved by the Congress of the United States.

3. The plaintiffs are children of Bonifacio Avilés; there is no question on this point.

4. Law No. 17, unrepealed, approved on August 20, 1952, 31 L.P.R.A. section 441, provides that *all children*

have inheritance rights in like manner as legitimate children in the estate left by their father. The inheritance provision of this law, which was the only question at issue before the Supreme Court of Puerto Rico, is retroactive since July 25, 1952 (Laws of Puerto Rico, Special Sessions, 1952, page 201), *i.e.*, it shall not be applied to persons who died before July 25, 1952. So, looking prospectively, from July 25, 1952, this inheritance provision was in force and should be applied in cases of parents who died, as in the instant case, in 1954.

5. Section 687, Civil Code of Puerto Rico (31 L.P.R.A. section 2263), in force when the Commonwealth Constitution was under consideration, and in force in 1954 at the time of the death of Bonifacio Avilés, provides that the qualifications of an heir are determined by the law in force at the time of the death of the person whose succession is in question. The meaning of this section 687 is that a child is heir if so is determined by the law at the time of the death of his parent. This is the only plain and unquestionable meaning given to this provision of the Civil Code of Puerto Rico by the Supreme Court of Puerto Rico, in *Febre* v. *Febre*, 40 P.R.R. 208; *Gijón* v. *Surillo*, 31 P.R.R. 191; *Correa* v. *Correa*, 18 P.R.R. 115; and *Ex Parte Smith*, 14 P.R.R. 643. Illegitimate children in Puerto Rico again acquired status of heirs since Law No. 17 of 1952 became in force, reenacting a previous law that had been in force until 1911. (Section 191, Revised Codes and Statutes of Puerto Rico, 1902, page 820.)

6. The inescapable error of the Supreme Court of Puerto Rico is obvious and shocking, in denying the equal protection of these Puerto Rico statutes to the plaintiffs as children of Bonifacio Avilés. By the spirit and plain letter of these Puerto Rico statutes the persons "in like case" are "all children," including, of course, illegitimate children. The lawmaker, in the 1952 statute, said "all

children." The Supreme Court of Puerto Rico discriminated grossly against these illegitimate children, bestowing undue favor and unwarranted class privilege to the defendant as a legitimate child. *Truax* v. *Corrigan*, 257 U.S. 312, 332-333.

7. The only reason stated by the Supreme Court of Puerto Rico, in reversing the judgment of the trial court in this case, was said Report of the Committee of the Bill of Rights. This Report is preposterous and entirely inapplicable, on the grounds argued by the plaintiffs in their brief before the United States Court of Appeals, which in part reads as follows:

"Said Law No. 17 of 1952 was adopted by the Legislative Assembly of Puerto Rico, exercising its full legislative powers as granted by the Constitution of the Commonwealth of Puerto Rico (L.P.R.A. Vol. 1, p. 185, Sec. 1), and furthermore exercising its legislative powers as reserved by the Federal Relations Act (L.P.R.A. Vol. 1, p. 167, Sec. 37.)

"Under the previous Puerto Rico (Jones) Organic Act of 1917 and under the previous (Foraker) Organic Act of 1900 the Legislature of Puerto Rico was also fully empowered to adopt such legislation on descent and inheritance, of local concern. In fact, under the colonial and restrictive (Foraker) Organic Act of 1900 the Legislature of Puerto Rico adopted a similar law, establishing that in like manner as any legitimate children the illegitimate children would have equal share over the estate of their parents. (Section 191 of the Revised Civil Code of Puerto Rico of 1902; Revised Codes and Statutes of Puerto Rico, 1902, p. 820). This provision was repealed in 1911. Law No. 17 of August 20, 1952, re-established such provision in our legislation on descent and inheritance.

"The Supreme Court of Puerto Rico ruled that this Law No. 17 of 1952, re-establishing the right of all chil-

dren to equal share over the estate left by their parents in like manner as any legitimate children, so far as it refers to the plaintiffs in the instant case, is contrary to the Constitution of the Commonwealth of Puerto Rico, and explains as follows:

> "'In the Report of the Committee of the Bill of Rights and in the debates of the Constitutional Convention it was clearly indicated that "for the purposes of inheritance and property, the changes resulting from this section (referring to Section 1 of the Bill of Rights) shall not be retroactive to births occurring prior to its effectiveness . . ."' (R.A. 28.)

"Such explanation in the per curiam decision of the Supreme Court of Puerto Rico is a very gross error. This is really the main point in this appeal. Such ruling is unwarranted, outrageous and prejudicial not only to the plaintiffs in this private lawsuit but also to the people at large of Puerto Rico. It is obvious that this matter is invested with extraordinary public interest, affecting the fundamental rights of so many people. Such opinion of the Supreme Court repeals and nullifies judicially, as it covers the plaintiffs, statutes in force. This opinion of the Puerto Rico Supreme Court violates elementary and sound principles well established for the construction of constitutions, and is strikingly contrary to the letter and to the equalitarian spirit that pervades all the Puerto Rico Commonwealth Constitution.

"Let us emphasize first that such Report of the Committee of the Bill of Rights of the Constitutional Convention on this matter was a lapsus calami or simply a mistaken recommendation or advice addressed to the Constitutional Convention, and, of course, before the adoption of the Constitution. This recommendation or advice was

not heeded by the Convention when the Constitution was adopted. There is not a single word in the constitutional text expressing that such recommendation or advice was accepted by the Convention. The provision of the Commonwealth Constitution bearing on the subject is too plain and clear. As cited above, the Commonwealth Constitution, as adopted by the Convention, provides, in unambiguous terms, that all men are equal before law, and that no discrimination shall be made on account of birth; and did not add any word to make distinction as to the date of birth. It is preposterous to rule, contrary to copious and sound judicial precedents, that such extrinsic words are terms of the constitutional text.

"Moreover, as to the Debates of the Constitutional Convention, on the cited pages 520-525, such Debates do not contain a single word expressing or implying the purpose or intent of the Convention to add to said constitutional provision the words mistakenly added by the Supreme Court. Contrariwise, in said pages of the Debates it was stated twice by a Delegate, Mr. Antonio Reyes Delgado, that in Puerto Rico the principle established is that the law of descent and inheritance is the law in force at the time of the death of the person whose succession is in question. These remarks of Mr. Antonio Reyes Delgado were not objected to by any Delegate during the proceedings concerning such provision of the Constitution.

"As matter of contemporary history, let us state that in the book entitled 'Notes and Comments on the Constitution of the Commonwealth of Puerto Rico,' published in Washington, D.C., 1952, by Hon. Antonio Fernós-Isern, Resident Commissioner of Puerto Rico to the United States, co-father of the Puerto Rico Commonwealth (see Judge Calvert Magruder's magazine article, University of Pittsburg Law Review, Vol. 15, No. 1, pp. 1 *et seq.*) and president of the Constitutional Convention, in relation to

the provision above-cited of the Commonwealth Constitution, it is stated:

> "'*Birth*—This provision will prevent discrimination against all persons on account of the circumstances of birth. It will, for example, assure that illegitimate children will not be penalized by reason of the illicit union of their parents, nor will their parents be relieved of responsibility for them.' (P. 35.)
>
> 31 L.P.R.A. Section 441, note.

"Remember that pursuant to the requirements of the enabling Federal Public Law No. 600 (L.P.R.A. Vol. 1, pp. 125-126), the people of Puerto Rico voted at the polls adopting the Commonwealth Constitution (L.P.R.A. Vol. 1, p. 132), and the President and Congress of the United States, in two final steps, required likewise by said Federal Law No. 600, also adopted the Commonwealth Constitution as it reads in the text approved by the Convention. No such extrinsic matter of Reports and Debates was submitted to the people at the polls, nor to the President or Congress.

"There is not a single provision or word in the Commonwealth Constitutional text prohibiting such legislation as provided in said Law No. 17 of August 20, 1952, nor repealing said Section 687 of the Civil Code of Puerto Rico (31 L.P.R.A. Section 2263), which provides that heirship is determined by the law in force at the time of the death of the person whose estate is in question.

"The letter of the Commonwealth Constitution is plain, clear, precise, unambiguous and undoubtful, establishing that there shall be no discrimination on account of birth. The spirit that pervades throughout all the Commonwealth Constitution is equalitarian. Adding such extrinsic terms

as added by the Supreme Court to the constitutional text is preposterous.

"Said provisions of the Commonwealth Constitution is part of the Bill of Rights, which was required by said Federal Law No. 600. No Constitution ever made by freedom-loving men throughout the history of mankind has provided that human rights guaranteed in a Bill of Rights are rights for the unborn and not for the living at the time of the adoption of the Constitution. The approach of the Supreme Court of Puerto Rico to this constitutional provision is unwarranted, narrow-minded, backward-looking, reactionary and utterly opposed to the equalitarian letter and spirit of the Puerto Rico Commonwealth Constitution. Under the same approach to the Amendment of the Constitution of the United States which provides for the abolition of slavery, perhaps there would still exist slaves in the United States.

"Such opinion of the Supreme Court of Puerto Rico, denying to the plaintiffs their inheritance rights established by a plain, undoubtful and unambiguous statute of Puerto Rico, is an intent to abrogate judicial control over social policy, solemnly disclaimed by so many United States Supreme Court decisions.

"Under the time-honored principle of judicial presumption of constitutionality, Acts of our Puerto Rico Legislature are valid until proved beyond question that such statutes are openly contrary to plain and specific prohibitions stated in the constitutional text. Moreover, in the instant case, the Puerto Rico Commonwealth Constitution, as adopted by the Convention and by the Puerto Rican people at the polls, in its plain text supports said Act No. 17 of 1952, which implements said constitutional provision of the Bill of Rights.

"A statute providing in general terms for inheritance by illegitimate children, in like manner as if born in lawful

wedlock, includes all illegitimate children, irrespective of the question whether their parents could have lawfully married or not. *Brewer's Lessee* v. *Blougher*, 14 Pet. 178; Annotation, 10 L. ed. 408.

"The right of an individual citizen and resident of the state to direct the descent of his property by will, or permit its descent to be regulated by the statute, as well as the right to receive the property of his testator or ancestor as legatee, devisee, or heir, is derived from and regulated by the state. *Plummer* v. *Coler*, 178 U.S. 115, 20 S. Ct. 829.

"The right to inherit property, or to receive it under testamentary disposition, is the creation of statutory law. *Maxwell* v. *Bugbee*, 250 U.S. 525, 40 S. Ct. 2. Annotation, 103 A.L.R. 223, on legislative authority on matter of descent and inheritance.

"The constitution must be interpreted in the light of the law existing when it was adopted. *Mattox* v. *United States*, 156 U.S. 237, 15 S. Ct. 337, 39 L. ed. 409.

". . . debates and proceedings [in constitutional conventions] are not [admissible] to control the construction of the plain language of the Constitution or narrow down the powers which that instrument confers. *Legal Tender Cases*, 12 Wall. 457, 20 L. ed. 287.

"The true spirit of constitutional interpretation both as to grants of powers and in respect to prohibitions and limitations is to give full, liberal construction to the language, aiming ever to show fidelity to the spirit and purpose. *Fairbank* v. *United States*, 181 U.S. 283, 21 S. Ct. 648, 45 L. ed. 862.

"Ordinarily words in [an instrument like the Constitution] do not receive a narrow, contracted meaning, but are presumed to have been used in a broad sense, with a view of covering all contingencies. *In the Matter of Strauss*, 197 U.S. 324, 25 S. Ct. 535.

"Words, especially those of a constitution, are not to be read with such stultifying narrowness. *United States* v. *Classic*, 313 U.S. 299, 61 S. Ct. 1031.

"A constitutional provision should not be construed so as to defeat its evident purpose. *Jarrolt* v. *Moberly*, 103 U.S. 580.

"In placing a construction upon a written constitution, or any clause or part thereof, the court should look to the nature and objects of the particular powers, duties, and rights in question, with all the aids and lights of contemporary history. *Kendall* v. *United States ex rel. Stokes*, 12 Pet. 524, 9 L. ed. 1181.

". . . rules of descent [are] subject to change by the law-making power as to any land not already passed to the heir by the death of the owner. Not until the ancestor dies is there any vested right in the heir. *Jefferson* v. *Fink*, 247 U.S. 288, 38 S. Ct. 516.

"Committee reports or debates in constitutional conventions can not be considered when the language of the constitutional text is plain and unambiguous. *Caminetti* v. *United States*, 242 U.S. 470, 37 S. Ct. 192. *Russell Motor Car Co.* v. *United States*, 261 U.S. 514, 43 S. Ct. 428. *United States* v. *Missouri Pacific R.R. Co.*, 278 U.S. 269, 49 S. Ct. 133. *Red "C" Oil Mfg. Co.* v. *Board of Agriculture of North Carolina*, 172 Fed. 695 (affirmed, 222 U.S. 380, 32 S. Ct. 152). *Pennsylvania R.R. Co.* v. *International Coal Mining Co.*, 230 U.S. 184, 33 S. Ct. 893.

". . . debates and proceedings [in a constitutional convention] are not [admissible] to control the construction of the plain language of the Constitution or narrow down the powers which that instrument confers. *Legal Tender Cases*, 12 Wall. 457, 20 L. Ed. 287.

"A constitution derives its validity not from the act of the convention in framing it, but from that of the people

in ratifying it, so that the intent of the latter is the real question in arriving at its proper construction. 70 A.L.R. 34.

"In this connection it may be noted that it seems of doubtful propriety to consult the contemporaneous debates and proceedings of the convention from which the proposed Constitution issued, since the inquiry is not with regard to the intention of its framers, but with the people who adopt it. The contemporaneous debates and proceedings of legislatures have frequently been resorted to as an aid in determining, in cases of uncertainty, what the law enacted was intended to effect, but in such cases the inquiry has been with regard to the intention of the body which framed and enacted the law. In considering a constitutional provision, the relevancy of the debates and proceedings of those who framed it to the intention of those who adopted it is certainly not apparent. 70 A.L.R. 34."

8. Such Committee Report, wrongly interpolated in the Puerto Rico constitutional text by the Supreme Court of Puerto Rico, would be an unfair and reactionary injunction to the Legislative Assembly of Puerto Rico against further legislation on inheritance rights of illegitimate children.

9. The judgment of the Supreme Court of Puerto Rico in this case, if finally affirmed, would create in Puerto Rico two distinct castes of illegitimate children, one a superior caste, those born after July 25, 1952, with inheritance rights; and the other caste, an inferior one (as the untouchables of India) with no rights, those born before 1952. This decision of the Supreme Court of Puerto Rico is patently wrong, and is openly in conflict with the command of said 1952 statute, which gives inheritance rights to "all children." It is also in conflict with the equalitarian letter and spirit of the Puerto Rico Commonwealth Constitution.

10. Any reference to laws prior to the 1952 statute, or former laws approved before the time, epoch making, when the people of Puerto Rico adopted the Commonwealth Constitution, is really irrelevant. The new social policy plainly established by the Puerto Rico Commonwealth Constitution and by Law No. 17, approved on August 20, 1952, should prevail.

11. When the people of Puerto Rico voted at the polls approving said enabling Public Law No. 600, the people of Puerto Rico consciously consented that, as regular steps in the judicial processes of Puerto Rico, the United States Court of Appeals for the First Circuit and the United States Supreme Court would protect the lawful rights of the American citizens of Puerto Rico, under the principles and provisions of the Constitution of the United States, a protection expected against any encroachment, belief or action of any branch of the Government of Puerto Rico.

Conclusion.

It is respectfully submitted that there is here presented a proper and fair occasion for the exercise of the supervisory power of this Court in behalf of the petitioners who are claiming "equal justice under the law" and in behalf of a big segment of the population of Puerto Rico in like condition as illegitimate children, a minority discriminated against, in inescapable error, by the decision of the Supreme Court of Puerto Rico, in conflict with the plain command of said Law No. 17, approved on August 20, 1952.

Wherefore the plaintiffs pray this Supreme Court of the United States to issue a writ of certiorari to the United States Court of Appeals for the First Circuit to review said decision of the United States Court of Appeals for the First Circuit; and the plaintiffs pray further this Supreme

Court, upon review, to enter a decision reversing said decision of the United States Court of Appeals for the First Circuit and affirming in all its parts the decision entered on May 10, 1956, by the trial court of Puerto Rico, which sustained the complaint and decreed that the petitioners (plaintiffs) are children of Bonifacio Avilés, with all the rights belonging to said children as such, including to each one the right to inherit from their common father in a share equal to that of his legitimate daughter, in the properties left by their father at the time of his death.

Respectfully,

BOLÍVAR PAGÁN,
Attorney for the petitioners,
P. O. Box 3791,
San Juan, Puerto Rico.

San Juan, Puerto Rico, April 3, 1958.

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Supreme Court of the United States.

OCTOBER TERM, 1957.

No. 925

CARMEN MÁRQUEZ ET AL.,
Petitioners,

v.

MARGARITA AVILÉS,
Respondent.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

BOLÍVAR PAGÁN,
Attorney for Petitioners,
P. O. Box 3791,
San Juan, Puerto Rico.

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Supreme Court of the United States.

OCTOBER TERM, 1957.

No.

CARMEN MÁRQUEZ ET AL.,
Petitioners,

v.

MARGARITA AVILÉS,
Respondent.

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT.

SUPREME COURT OF PUERTO RICO
AGUADILLA PART

(Formerly District Court for the Judicial District of Puerto Rico, Aguadilla Part)

Order and Judgment

This case was called today for hearing on the motion filed by the defendant to dismiss the amended complaint filed herein.

The parties submitted said motion on its merits. The plaintiffs filed an amended complaint of filiation alleging in short that Carmen, Nemesio, José Antonio, Isabel, Wilson, Elba, and Edwin Márquez, who were born in Moca, in 1928, 1929, 1931, 1933, 1934, 1936 and 1940, respectively, are the illegitimate children (adulterous) of Narcisa Márquez and the late Bonifacio Avilés, and asking for the acknowledgment and partition of the properties of said decedent, and/or the share belonging to the plaintiffs on the properties left by said Bonifacio Avilés at his death in Moca, Puerto Rico, on March 18, 1954. Besides, on paragraph 4 of the amended complaint it is alleged that by judgment entered by the former District Court of Aguadilla, now Superior Court of Puerto Rico, Aguadilla Part, on August 22, 1945, in a case for support, it was determined that said Bonifacio Avilés was the father of the plaintiffs to the extent of his obligation to support them, and that said judgment is final and unappealable because it was affirmed by the Supreme Court of Puerto Rico, on July 14, 1946.

Section 2 of Act No. 229, of 1942, as amended by Act No. 243, of May 12, 1945, provides:

> "Section 2.—Children born out of wedlock prior to the date this Act takes effect, and who lack the qualifications of natural children according to previous legislation, may be recognized for all legal purposes by the voluntary action of their parents, and in their default, by that of the persons having the right to inherit therefrom. These children will be legitimized by the subsequent marriage of the parents to each other.
>
> "In case the children referred to in this Section are not recognized by the voluntary action of their parents, and in default of the latter, by that of the persons having the right to inherit therefrom, said children shall be considered as natural children for the

sole purpose of bearing the surname of their parents. The action for this recognition shall be prosecuted in accordance with the procedure fixed by the Civil Code of Puerto Rico for the recognition of natural children; *It being understood, however,* That such a recognition shall only have the scope herein expressed."

The amended complaint did not allege either that the decedent had acknowledged his alleged children in their records of birth, in his testament or in any other public instrument.

However, in their brief the plaintiffs cite, as applicable to them, Act No. 17 of August 20, 1952, with retroactive effect to July 25, 1952. This Court is of the opinion that said Act is not applicable to this case. The purpose of said Act is to implement the constitutional provision in connection with children born after July 25, 1952, date in which the Constitution of the Commonwealth of Puerto Rico took effect. Its purpose is to prove that after a child gets its filiation under the filiation laws now in force, he may have, as regards the properties left by his father, the same rights as his legitimate children. The Report of the Committee on the Bill of Rights of the Constitutional Convention reads in part: "For inheritance and property purposes future amendments to this section shall not be retroactive to births prior to its effectiveness." (See *Figueroa* v. *Díaz*, 75 P.R.R. 154, 180.) This Act has not repealed Act No. 229 of 1942, as amended in 1945, either expressly or implicitly.

WHEREFORE, the Court believes that it should sustain, as it hereby sustains, the motion to dismiss, because under Act No. 243 of May 12, 1945, illegitimate children, who are not natural children (in this case they were adulterous when born), and born before 1942 and not acknowledged by their father, and in lieu thereof by his heirs, do not

have a right to filiation and hence to a share in the properties left at his death by the alleged father, as prayed for in their complaint.

The amended complaint not being subject to a new amendment and the motion to dismiss having been sustained, the Court hereby enters judgment dismissing the amended complaint, with costs, without attorneys fees, on the plaintiffs.

Let the Clerk serve on the parties copy of this order and judgment.

Given in Aguadilla, Puerto Rico, and registered this 12th day of November, 1954.

(s) WILLIS RAMOS VÁZQUEZ,
Judge

I attest:
(s) LUIS R. ACEVEDO
Clerk of the Court

PUERTO RICO TRIAL COURT

SUPERIOR TRIBUNAL, AGUADILLA PART

Statement of the Case, Findings of Fact and of Law, and Judgment

Complying with the Judgment entered by the Supreme Court of Puerto Rico on September 6, 1955, in this case, reversing this Superior Court, further proceedings were had. The amended complaint was answered and the hearing was held on its merits on March 8, 1956. The parties appeared assisted by counsel and they presented both oral and documentary evidence. The case was submitted by the parties on the evidence presented by the plaintiffs, which the Court believes in its entirety. Weighing said evidence

and considering the admissions made by the defendant, this Court finds as follows:

Findings of Fact

1. Bonifacio Avilés died in Moca, Puerto Rico, on March 18, 1954.

2. Defendant Evarista Avilés, legitimate daughter of Bonifacio Avilés, also known as Margarita Avilés, before the judgment to be rendered in this case, was the sole and universal heir of said Bonifacio Avilés.

3. Carmen, born in Moca, on October 17, 1926; Nemesio, born in Moca, on March 3, 1928; José Antonio, born in Moca, on May 11, 1930; Ismael, born in Moca, on December 10, 1931; Elba Lydia, born in Moca, on August 22, 1937; Wilson, born in Moca, on August 14, 1938; and Edwin, born in Moca, also on August 14, 1938, all having the surname Márquez, were conceived through adulterous relations between Narcisa Márquez and said Bonifacio Avilés; during the pregnancy and at the time of the birth of each and everyone of the above children, Narcisa Márquez was known to be living in concubinage with said Bonifacio Avilés; and said children since they were born until February, 1941, were uninterruptedly enjoying the condition of natural children of his said father, justified by acts of the father himself, including acts of affection, payment of room, support, clothing, and medicines.

Findings of Law

According to Section 125 of the Civil Code of Puerto Rico (31 LPRA § 504) and according to said Judgment of the Supreme Court and the cases of *Cruz* v. *Andrini*, 66 P.R.R. 19; *Fernández* v. *Heirs of Fernández*, 66 P.R.R. 831; and *Montañez* v. *Rodríguez*, 67 P.R.R. 198, cited there-

in, the father or his heirs are bound to recognize his natural children when said children have uninterruptedly enjoyed the condition as of a natural child of said father, justified by acts of the same father or of his family, or when their mother was known to have lived in concubinage with the father during her pregnancy and at the time of the birth of the children.

Under Section 687 of the Civil Code of Puerto Rico (31 LPRA § 2263) and according to what has been decided in the cases of *Febre* v. *Febre*, 40 P.R.R. 208; *Gijón* v. *Surillo, et al.*, 31 P.R.R. 191; *Correa et al.* v. *Correa, et al.*, 18 P.R.R. 115 and *Ex Parte Smith, et al.*, 14 P.R.R. 643, the right to inherit is determined in accordance with the law in force at the time of the death of the person whose succession is in question.

Pursuant to the provisions of Act No. 17, approved on August 20, 1952 (31 L.P.R.A. § 441) which was in force as stated above at the time of the death of Bonifacio Avilés, all children have, with respect to their parents and to the estate left by the latter, the same rights that correspond to legitimate children.

JUDGMENT

For the reasons and grounds stated in the Statement of the Case and Findings of Fact and of Law issued in this case, which is attached to this judgment and made part thereof, the amended complaint filed in this case is hereby sustained, and it is decreed that plaintiffs Carmen, Nemesio, José Antonio, Ismael, Elba, Lydia, Wilson, and Edwin Márquez are the acknowledged illegitimate children of Bonifacio Avilés, with all the rights belonging to said children as such, including the right to inherit his father in a share equal to that of his legitimate daughter mentioned above, in the properties left by him at his death.

Costs and $1,000 for plaintiffs' attorneys fees are taxed on the defendant.

Let this judgment be registered and notified.

Given in Aguadilla, Puerto Rico, and registered this 10th day of May, 1956.

(s) WILLIS RAMOS-VÁZQUEZ
Judge

I attest:
(s) LUIS R. ACEVEDO
Clerk of the Court

SUPREME COURT OF PUERTO RICO

Judgment

CARMEN MÁRQUEZ et al., Plaintiffs-appellees, v. MARGARITA AVILÉS, Defendant-appellant,	)	No. 12,053 Appeal from the Superior Court, Aguadilla Part. Filiation

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San Juan, Puerto Rico, March 29, 1957

PER CURIAM: The record in this case having been examined and the questions raised by the parties in their briefs having been considered, this Court is of the opinion that the judgment of the lower court should be modified by striking therefrom: (1) the statement that Carmen, Nemesio, José Antonio, Ismael, Elba Lydia, Wilson, and Edwin Márquez are entitled to a share in the hereditary estate of

their father Bonifacio Avilés Pérez at his death and (2) the award of attorney's fees of $1,000.

Pursuant to § 2 of Act No. 229 of May 12, 1942, as amended, 31 L.P.R.A. § 502, children born out of wedlock prior to the effective date of that Act who were not acknowledged by the voluntary action of their parents, and in their default, by the persons having the right to inherit therefrom, shall be considered natural children for the sole purpose of bearing their father's surname. See *Cruz* v. *Andrini*, 66 P.R.R. 119 (1946); *Fernández* v. *Heirs of Fernández*, 66 P.R.R. 831 (1947); *Montañez* v. *Rodríguez*, 67 P.R.R. 198 (1947), and *Vargas* v. *Jusino*, 71 P.R.R. 362 (1950). Inheritance is a consequence of filiation and although § 1 of Act No. 17 of August 20, 1952 provides that "all children have, with respect to their parents and to the estate left by the latter, the same rights that correspond to legitimate children," this provision was approved solely for the purpose of enforcing the provisions of § 1 of the Bill of Rights of the Constitution of the Commonwealth of Puerto Rico which provides: "The dignity of the human being is inviolable. All men are equal before the law. No discrimination shall be made on account of race, color, sex, birth, social origin or condition, or political or religious ideas. Both the laws and the system of public education shall embody these principles of essential human equality." In the Report of the Committee of the Bill of Rights and in the debates of the Constitutional Convention it was clearly indicated that "for the purposes of inheritance and property, the changes resulting from this section (referring to § 1 of the Bill of Rights) *shall not be retroactive to births occurring prior to its effectiveness.*"* See *Diario de Sesiones, Procedimientos y Debates de la Convención Constituyente de Puerto Rico*, pp. 520-525.

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*[The quoted translation from the *Álvarez* v. *Álvarez* opinion is printed above as amended by the order of the Supreme Court of Puerto Rico of June 11, 1957.]

In the case at bar all of the plaintiffs were born prior to 1941, when their father Bonifacio Avilés Pérez was married to Josefa Cruz Barreto. Therefore, it is obvious that they can only be considered as natural children for the purpose of bearing their father's surname, since they were at no time acknowledged by the voluntary action of their father nor by that of the persons entitled to inherit from Bonifacio Avilés-Pérez.

As modified, the judgment appealed from will be affirmed.

(The Same Title)

Judgment

San Juan, Puerto Rico, March 29, 1957

For the reasons stated in the foregoing Per Curiam opinion, the judgment appealed from entered in the above-captioned case by the Superior Court, Aguadilla Part, on May 10, 1956, is hereby affirmed, being modified, however, to read as follows: "It is hereby declared that Carmen, Nemesio, José Antonio, Ismael, Elba Lydia, Wilson, and Edwin Márquez are all natural children of Bonifacio Avilés-Pérez, for the sole purpose of bearing their father's surname, with costs on the defendant, without attorneys fees."

It was thus decreed and ordered by the Court as witness the signature of the Chief Justice. Mr. Justice Negrón Fernández did not take part in the decision of this case.

(s) A. C. SNYDER
Chief Justice

I attest:
(s) Ignacio Rivera
Secretary

Opinion of the United States Court of Appeals For the First Circuit

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No. 5250.

CARMEN MARQUEZ ET AL.,
PLAINTIFFS, APPELLANTS,
v.
MARGARITA AVILES,
DEFENDANT, APPELLEE.

APPEAL FROM THE SUPREME COURT OF PUERTO RICO.

Before MAGRUDER, *Chief Judge*, and WOODBURY and HARTIGAN, *Circuit Judges*.

Bolivar Pagan for appellants.
Enrique Cordova Diaz, with whom *Manuel A. Garcia Mendez* and *Manuel A. Garcia Hermida* were on brief, for appellee.

OPINION OF THE COURT.

February 25, 1958.

MAGRUDER, *Chief Judge*. Appellants herein are seven persons all born between the period 1928-1940 as illegitimate children of an adulterous union between Bonifacio Aviles Perez and Narcisa Marquez. Appellee is the legitimate daughter of Bonifacio Aviles Perez and his wife Josefa Cruz Barreto, and is at present the sole and universal heir of Bonifacio Aviles Perez, who died in Puerto

Rico in 1954; that is, appellee is the sole universal heir, if appellants are not also lawful heirs of Bonifacio Aviles Perez, entitled to share in his hereditary estate.

A civil action for filiation was filed by appellants as plaintiffs in the Superior Court of Puerto Rico, Aguadilla Part, in which these illegitimate children sought a court decree declaring that the plaintiffs are the children of Bonifacio Aviles Perez, deceased, with hereditary rights over the properties left at his death.

On November 12, 1954, the Superior Court entered judgment dismissing the complaint in toto, although by Act No. 248, approved May 12, 1945, Laws of Puerto Rico 1945, p. 814, the plaintiffs, as children in fact of Bonifacio Aviles Perez, were entitled to a declaration that they were to be considered "as natural children for the sole purpose of bearing the surname of their parents". See *Cruz* v. *Andrini*, 66 P.R.R. 119 (1946); *Fernandez* v. *Heirs of Fernandez*, 66 P.R.R. 831 (1947). Accordingly, on appeal, the Supreme Court of Puerto Rico on September 6, 1955, reversed the judgment of the Superior Court and remanded the case to that court for further proceedings.

After such further proceedings in the Superior Court, that court on May 10, 1956, entered judgment declaring that the seven plaintiffs are the "acknowledged illegitimate children of Bonifacio Aviles, with all the rights belonging to said children as such, including the right to inherit [from] his father in a share equal to that of his legitimate daughter mentioned above, in the properties left by him at his death." Upon a second appeal of the case, the Supreme Court of Puerto Rico on March 29, 1957, entered judgment modifying the judgment of the Superior Court so as to declare merely that the seven plaintiffs "are all natural children of Bonifacio Aviles-Perez, for the sole purpose of bearing their father's surname," and as thus modified the judgment below was affirmed. Thus, as ap-

pears from an accompanying per curiam opinion by the Supreme Court of Puerto Rico, that court in effect struck from the judgment of the Superior Court the important provision declaring that the plaintiffs are heirs of Bonifacio Aviles Perez, entitled to share in his hereditary estate. From that judgment of the Supreme Court of Puerto Rico the seven original plaintiffs took the present appeal to this court.

Our jurisdiction of this appeal is based on 28 U.S.C. § 1293. Appellants seek to raise certain federal questions of due process of law and of equal protection of the laws. They also seek to raise certain questions of insular local law, as to which they say the judgment of the Supreme Court of Puerto Rico was "inescapably wrong".

This appeal is patently frivolous in so far as it seeks to torture the questions presented into federal constitutional questions. We have hitherto found it unnecessary to determine whether we should apply to Puerto Rico the due process clause of the Fifth Amendment or of the Fourteenth Amendment since July 25, 1952, when the status of Puerto Rico was changed to that of a commonwealth under the American flag. See *Mora* v. *Mejias*, 206 F.2d 377, 382 (C.A. 1st, 1953). Nor do we have to decide that question now. Appellants' due process argument assumes in their favor the very point of local law at issue, namely, whether under the law of Puerto Rico appellants have the legal status of heirs, entitled to share in the hereditary estates of Bonifacio Aviles Perez. Making that assumption, appellants say that they have a property right, of which they have been deprived by the Commonwealth of Puerto Rico acting through its judicial branch. But if that assumption is found to be incorrect, as a matter of local law, the appellants have obviously not been deprived of any property right without due process of law. Of course "due process of law does not mean infallible process of law", as Learned

Hand, J., observed in *Schechtman* v. *Foster*, 172 F.2d 339, 341 (C.A. 2d, 1949). It all gets back, then, to a question of local law as to what are the legal rights of appellants as illegitimate children of an adulterous union.

As to equal protection of the laws, this court had the following to say in *Stagg, Mather & Hough* v. *Descartes*, 244 F.2d 578, 583 (1957):

> "It is true that this court in due process cases has not yet found it necessary to decide whether the Fifth or the Fourteenth Amendment applies in Puerto Rico, and the Fifth Amendment, unlike the Fourteenth, has no equal protection clause. But Fifth Amendment due process covers at least some denials of equal protection, for the Supreme Court in *Bolling* v. *Sharpe*, 1954, 347 U.S. 497, 499, 74 S.Ct. 693, 694, 98 L.Ed. 884, after pointing out that both concepts stem from the American idea of fairness said:
>
> > 'The "equal protection of the laws" is a more explicit safeguard of prohibited unfairness than "due process of law," and, therefore, we do not imply that the two are always interchangeable phrases. But, as this Court has recognized, discrimination may be so unjustifiable as to be violative of due process.' "

In any event, it is manifestly impossible to make out a case of denial of equal protection of the laws here, for, as we held in *Everlasting Development Corp.* v. *Descartes*, 192 F.2d 1, 7 (1951), cert. denied 342 U.S. 954 (1952): "There must be a purposeful discrimination against one person and in favor of another person in like case, with no rational basis for a differentiation between the two." Appellants founded their claim of legal right upon a provision of § 1 of the Bill of Rights of the Commonwealth

Constitution, which became operative July 25, 1952, and upon Act No. 17 of August 20, 1952, Laws of Puerto Rico, Spec. Sess. 1952, p. 200, an act passed to implement the rights granted in the Commonwealth Constitution. The Supreme Court of Puerto Rico rejected this contention on the ground that all of the appellants were born prior to July 25, 1952. In this respect the court was merely applying to appellants the same rule of non-retroactivity which it had already applied to other persons born prior to the establishment of the Commonwealth, in *Alvarez* v. *Alvarez*, 77 P.R.R. 862 (1955), and in *Sanchez* v. *Diaz*, 78 P.R.R. 771 (1955). There has been no discrimination, "purposeful" or otherwise, between appellants and other persons "in like case".

There remains for consideration only the question of the correctness of the ruling of the Supreme Court of Puerto Rico as a matter of local law.

In *Figueroa* v. *People of Puerto Rico*, 232 F.2d 615, 618 (C.A. 1st, 1956), without deciding the point, we suggested the possibility that, when the Congress passed its joint resolution approving the constitution of the Commonwealth, 66 Stat. 327, which constitution in § 3 of Art. V provided that the Supreme Court of Puerto Rico "shall be the court of last resort in Puerto Rico", the Congress might be deemed to have thereby impliedly withdrawn from the Court of Appeals for the First Circuit "this anomalous vestige of federal jurisdiction over local law questions" as provided in 28 U.S.C. § 1293, with the gloss put upon that provision by *De Castro* v. *Board of Commissioners*, 322 U.S. 451 (1944), and cases cited therein. Though our technical jurisdiction to review local law questions has not been challenged in the present case, we are aware, of course, of the statement frequently made that a court sua sponte must always take note of its own lack of jurisdiction. If we were inclined to reverse the Supreme Court of

Puerto Rico upon a determination that its decision of a local law question was "inescapably wrong", we would certainly have to determine of our own motion whether we had any jurisdiction in the premises before we exercised such appellate power of reversal. But where, as in the present case, we are so clearly of opinion that the decision of the Supreme Court of Puerto Rico on a point of local law must be sustained, we are inclined, in the absence of challenge, to assume that our vestigial jurisdiction remains unimpaired, however much technical niceties might suggest that we ought not to make that assumption.

When Puerto Rico in 1952 became a commonwealth, under its own constitution, that change of status certainly reinforced and intensified the reasons of policy which led the Supreme Court, in *De Castro* v. *Board of Commissioners*, supra, to adhere to the self-denying ruling under which appellate federal courts were told that they ought not to reverse a judgment of the Supreme Court of Puerto Rico on a question of local law unless that judgment was deemed to be "inescapably wrong" or "patently erroneous".

It is difficult to imagine a matter of more exclusively local concern than the question of the right of illegitimate children to inherit property of a deceased resident of Puerto Rico. This has been a matter of constant insular preoccupation, tracing back to Spanish sources. It is a subject which has been full of perplexities and technicalities, as a casual reading of the innumerable decisions of the Supreme Court of Puerto Rico will attest.

As previously stated, appellants have based their case upon a provision of the Commonwealth Constitution which came into effect on July 25, 1952, and upon a legislative act passed later the same year to implement that constitutional provision.

Section 1 of Art. II of the Puerto Rican Constitution contains a general declaration, as follows:

> "The dignity of the human being is inviolable. All men are equal before the law. No discrimination shall be made on account of race, color, sex, birth, social origin or condition, or political or religious ideas. Both the laws and the system of public education shall embody these principles of essential human equality."

In conformity with the last sentence of the above constitutional provision, the legislature of Puerto Rico, in order to implement this declaration of equal rights, passed Act No. 17, approved August 20, 1952 (Laws of Puerto Rico, Spec. Sess. 1952, p. 200) reading:

> "Section 1. All children have, with respect to their parents and to the estate left by the latter, the same rights that correspond to legitimate children.
>
> Section 2. The provisions of this Act shall have retroactive effect to July 25, 1952."

It is to be noted that the general declaration of equal rights contained in § 1 of Art. II is silent on the question of its applicability retroactively to affect the status of persons born before the constitution came into effect. The Supreme Court of Puerto Rico declined to read the section in a vacuum, but recognized that its provisions were the final culmination of a long history of legislative changes in Puerto Rico.

Subject, of course, to the power of the legislature to change the rules retroactively, the Supreme Court of Puerto Rico has frequently noted that filiation rights of an illegitimate child are governed by the statutes in force at the date of the birth of such illegitimate child. See

Charres v. *Arroyo*, 16 P.R.R. 777 (1910); *Mendez* v. *Martinez*, 21 P.R.R. 238, 252, 256 (1914); *Morales* v. *Heirs of Cerame*, 30 P.R.R. 784 (1922); *Mercado* v. *Heirs of Mangual*, 35 P.R.R. 388 (1926); *Silva* v. *Doe*, 75 P.R.R. 198, 207 (1953); *Sanchez* v. *Diaz*, 78 P.R.R. 771, 776 (1955).

For present purposes we need not go further back than the Act of March 9, 1911. Laws of Puerto Rico 1911, p. 234. That Act inserted §§ 193-197 into the old Civil Code so as to introduce a distinction between illegitimate children of an adulterous union, and "natural children", defined as "those born out of wedlock, from parents who, at the moment when such children were conceived or were born could have intermarried with or without dispensation." Only "natural children", as defined, were given the capacity, by subsequent "recognition", to achieve the status of heir, entitled to share in the hereditary estate of their father. That distinction was carried over without change into §§ 125-129 of the Civil Code, as revised in 1930.

The next important change occurred in the enactment of Act No. 229, approved May 12, 1942, which provided, in part, as follows:

> "Section 1. All children born out of wedlock subsequent to the date this Act takes effect, shall be natural children, whether or not the parents could have married at the moment when such children were conceived. These children will be legitimized by the subsequent marriage of the parents, to each other.
>
> Section 2. Children born out of wedlock prior to the date this Act takes effect, and who lack the qualifications of natural children according to previous legislation, may be recognized for all legal purposes by the voluntary action of their parents, and in their default, by that of the persons having the right to inherit therefrom. These children will be legitimized

by the subsequent marriage of the parents, to each other."

Thus, as to children born out of wedlock subsequent to May 12, 1942, § 1 of Act No. 229 enlarged the definition of "natural children" so as to remove the barrier of adultery which theretofore had prevented subsequent acknowledgment for all legal purposes. Section 2 of the same Act did retroactively change the law applicable to a so-called "adulterine", born prior to May 12, 1942, so as to permit such a child to be acknowledged, for all legal purposes, by the "voluntary action" of the father, or in default thereof by the persons having the right to inherit from him; but it has long been settled that the "voluntary action" referred to must appear by a recordation, a will, or other public instrument. See *Correa* v. *Heirs of Piza*, 64 P.R.R. 938 (1945); *Cruz* v. *Andrini*, 66 P.R.R. 119, 121-22 (1946). It is not claimed by appellants that there was ever any such acknowledgment by "voluntary action" in the case at bar. Thus it is clear that if the inheritance rights of appellants are governed by the statute law in force at the date of their respective births (1928-1940), they are not entitled as heirs to share in the hereditary estate of their father, Bonifacio Aviles Perez.

We have already referred to Act No. 243, approved May 12, 1945, Laws of Puerto Rico 1945, p. 814. That Act amended § 2 of Act No. 229, approved May 12, 1942, so as to add a paragraph providing that "adulterine" children born out of wedlock prior to May 12, 1942, who had not been recognized by the "voluntary action" referred to, should nevertheless "be considered as natural children for the sole purpose of bearing the surname of their parents. The action for this recognition shall be prosecuted in accordance with the procedure fixed by the Civil Code of Puerto Rico for the recognition of natural chil-

dren; *It being understood, however,* That such a recognition shall only have the scope herein expressed."

This brings us to the general declaration of equal rights contained in the Bill of Rights of the Puerto Rican Constitution, above referred to. Was this declaration intended to be prospective only, or was it intended to apply retroactively to enlarge the inheritance rights of persons born before the constitution came into effect? As above noted, § 1 of Art. II of the constitution was silent in this respect. Accordingly, the Supreme Court of Puerto Rico felt obliged to examine into the history of the adoption of this provision by the constitutional convention. In this respect, in the per curiam opinion in this case, the Supreme Court of Puerto Rico had the following to say:

> "In the Report of the Committee of the Bill of Rights and in the debates of the Constitutional Convention it was clearly indicated that 'for the purposes of inheritance and property, the changes resulting from this section (referring to § 1 of the Bill of Rights) *shall not be retroactive to births occurring prior to its effectiveness.*' See *Diario de Sesiones, Procedimientos y Debates de la Convencion Constituyente de Puerto Rico,* pp. 520-525."

Consequently, the Supreme Court of Puerto Rico concluded that appellants could only be "considered as natural children for the purpose of bearing their father's surname, since they were at no time acknowledged by the voluntary action of their father nor by that of the persons entitled to inherit from Bonifacio Aviles-Perez." In thus construing a provision of their local constitution, the Supreme Court of Puerto Rico was only adhering to a construction which it had already made in similar cases, in *Alvarez* v. *Alvarez*, 77 P.R.R. 862 (1955), and in *Sanchez* v. *Diaz*, 78 P.R.R. 771 (1955).

The action of the legislature of Puerto Rico in passing the implementing Act No. 17, approved August 20, 1952, was entirely consistent with this construction given the constitutional provision, for § 2 of Act No. 17 expressly provided that the provisions of this Act "shall have retroactive effect to July 25, 1952", the date on which the constitution became effective.

We mention briefly one point raised by appellants which the Supreme Court of Puerto Rico evidently did not consider of sufficient merit to comment upon. Appellants refer to the provision of § 687 of the Civil Code of Puerto Rico reading: "In order to determine the qualification of the heir or legatee, the time of the death of the person whose succession is in question shall be taken into consideration." They then point out that Bonifacio Aviles Perez did not die until 1954. But it is quite apparent from an inspection of the text, especially the second paragraph of § 687, that that section refers only to the preceding § 685, which prescribes the cases in which a person, admittedly an heir, may be disqualified from taking property by inheritance. As to the circumstances under which an illegitimate child may by recognition acquire the status of an heir, we have to look to the earlier sections of the Code.

All in all, it is obvious that we could not possibly hold the judgment of the Supreme Court of Puerto Rico to be "inescapably wrong" or "patently erroneous" in declaring the local law to be as above indicated.

A judgment will be entered affirming the judgment of the Supreme Court of Puerto Rico.